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Canada

Policy on Regulatory Development

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Policy on Regulatory Development

From Treasury Board of Canada Secretariat

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1. Purpose

This Policy on Regulatory Development (the policy) outlines the requirements that federal regulators must meet in order to comply with the Cabinet Directive on Regulation (the directive) as it relates to the process of developing regulations.

2. Effective date

This policy takes effect on September 1, 2018. It replaces the following:

- Guidelines for Effective Regulatory Consultations

- Assessing, Selecting, and Implementing Instruments for Government Action
- Guidelines on International Regulatory Obligations and Cooperation

3. Scope of application

This policy applies to all regulations to which the Cabinet Directive on Regulation applies.

4. Context

▸ In this section

Canada's regulatory system is designed to protect and advance the public interest in the following areas:

- health
- safety and security
- the quality of the environment
- the social and economic well-being of Canadians

Regulations are a form of law. They have binding legal effect and usually set out rules that apply generally rather than to specifically to persons or situations. Regulations are made by persons to whom, or bodies to which, Parliament has delegated an authority. Examples are:

- Cabinet
- a minister
- an agency

The authority to make regulations must be expressly delegated through enabling legislation.

The Government of Canada takes a life-cycle approach to regulations that requires departments [1] to examine and analyze regulations through the three stages of their life cycle:

- development
- management
- review and results

This policy explains the directive's requirements for developing regulations. Its purpose is to:

- provide a consistent approach to making regulations across the Government of Canada
- ensure that the policy commitments and legal obligations of the Government of Canada are met

The roles and responsibilities of central government agencies and regulators in the regulatory development process are described in section 9 of this policy.

4.1 Cabinet confidences and the regulatory process

Confidences of the Queen's Privy Council for Canada are described in:

- section 69 of the Access to Information Act
- section 70 of the Privacy Act
- section 39 of the Canada Evidence Act

The following are covered by Cabinet confidence:

- the Queen's Privy Council
- committees of the Privy Council
- Cabinet
- committees of Cabinet

The following Cabinet items are covered by Cabinet confidence:

- memoranda
- discussion papers
- agendas
- records of deliberations or decisions
- correspondence between ministers
- draft legislation
- any record that contains information related to any of the preceding

Because a committee of Cabinet [2] considers Governor in Council (GIC) regulatory proposals, its discussions are confidences of the Queen's Privy Council for Canada. The confidentiality of Cabinet discussions extends to:

- items on Cabinet agendas
- discussions among ministers
- decisions taken by Cabinet

For greater clarity, documents that are protected by Cabinet confidence include:

- briefing notes for the Treasury Board

- draft Orders in Council
- draft Regulatory Impact Analysis Statements (RIASs)
- draft regulations, except for versions prepared specifically for consultation

Much of the analysis contained in a RIAS is not a Cabinet confidence and can be included in consultation materials. For greater clarity, consult with the Treasury Board of Canada Secretariat (TBS).

Any document that pertains to a confidence of the Queen's Privy Council for Canada must be:

- marked, handled and safeguarded according to the sensitivity of their content (never lower than Protected B)
- treated according to:
    - the Access to Information Act
    - the Privacy Act
    - the Canada Evidence Act
    - the Policy on the Security of Cabinet Confidences
    - the Policy on Access to Information
    - the Policy on Information Management
    - pertinent departmental protocols for managing information

5. Definitions

For the purpose of this policy, the following definitions apply:

- **gender-based analysis plus (GBA+)** is an analytical tool to assess how diverse groups of women, men and gender-diverse people may experience policies, programs and initiatives. The "plus" in GBA+ acknowledges that:
    - gender-based analysis goes beyond biological (sex) and socio-cultural (gender) differences
    - people have multiple identity factors that intersect to make them who they are

  GBA+ also considers many other identity factors, including:
    - race
    - ethnicity
    - religion
    - age
    - mental or physical disability

- **Governor in Council (GIC) regulations** are made or approved by the GIC, where the GIC is the Governor General acting on the advice of the Queen's Privy Council for Canada (Cabinet) and Treasury Board ministers, who play the role of the Committee of Council that advises the Governor General on making or approving GIC regulations
- **incorporation by reference** is a drafting technique used to include, in whole or in part, content of a document within a regulatory text as if it were reproduced directly in the text of the regulation. Such a document may be:
    - a standard
    - legislation of another jurisdiction
    - a departmental policy or directive

  The referenced material becomes an integral part of the regulations and is legally binding.
- **non-Governor in Council (non-GIC) regulations** are made by a minister of the Crown or an agency without the need for the GIC's approval in cases where such authority has been conferred on the minister or an agency by an act of Parliament
- **other jurisdictions** are:
    - provinces
    - territories
    - First Nations bands
    - self-governing First Nations
    - municipalities in Canada or municipal or other public bodies performing a function of Government in Canada
    - a foreign state or a subdivision of a foreign state
    - an international organization or association of states
- **outcome-based regulations**, also known as a performance-based regulations, specify objectives or required outcomes rather than the means by which they must be achieved. Companies and individuals are free to choose how they comply with the regulatory requirements
- **regulations**, under the Statutory Instruments Act, are statutory instruments that are established pursuant to legislative powers conferred under an act of Parliament that may result in the imposition of legal sanctions if they are contravened. Government uses regulations to mandate or enable particular behaviours or outcomes in order to achieve public policy objectives. Regulations are either:
    - Governor in Council regulations
    - non-Governor in Council regulations

- **regulatory alignment** occurs when there is any agreement or arrangement, formal or informal, between jurisdictions that reduces or eliminates differences between:
    - independent regulations
    - regulatory systems
    - regulatory activities

  Regulatory alignment may also be unilateral when one jurisdiction mirrors the regulatory approach of another jurisdiction without establishing any agreement or arrangement. Regulatory alignment may occur with:
    - inspections
    - certification
    - standards
    - product and testing approvals

  Regulatory alignment may also be referred to as:
    - regulatory harmonization
    - regulatory convergence
    - mutual recognition
- **regulatory cooperation** is a process to:
    - find efficiencies across jurisdictions
    - reduce unnecessary regulatory differences
    - achieve domestic policy goals

  The process of regulatory cooperation aims to:
    - facilitate trade and investment
    - promote economic growth and job creation
    - increase consumer choice

  A central pillar of regulatory cooperation is the maintenance or enhancement of standards for environmental protection and public health and safety.
- a **Regulatory Impact Analysis Statement (RIAS)** is an evidence-based, non-technical synthesis of expected impacts, positive and negative, of a proposed regulation. It is published in the Canada Gazette with the text of the proposed regulation. Regulators prepare RIASs with guidance from TBS.
- the **regulatory life cycle** constitutes the cyclical stages of developing, managing and reviewing a regulation and its associated program(s) to ensure that it:
    - meets its policy objectives
    - results in the greatest overall benefit to current and future generations of Canadians

- a **small business**, for the purpose of the small business lens:
    - is any business, including its affiliates, that has fewer than 100 employees or less than $5 million in annual gross revenues
    - includes micro businesses, which have fewer than 5 employees or less than $30,000 in annual gross revenues
    - is defined based on commonly used definitions for what is considered a "small" business in Canada
- **stakeholders** are individuals or parties who have an interest or concern in federal regulations and related federal government initiatives. Stakeholders can include the following:
    - Canadians
    - Indigenous peoples
    - governments
    - organizations
    - businesses
    - trading partners
- the **Treasury Board (Governor in Council, also known as Treasury Board Part B)** acts as the Queen's Privy Council for Canada in its role in approving:
    - regulatory policies
    - regulations
    - most orders in council
- a **Triage Statement** summarizes the process to assess the level of impact of a regulatory proposal early in its development to ensure that the analytical requirements of the Cabinet Directive on Regulation are applied appropriately

6. Principles

This policy is grounded in the following four principles, set out in the directive, to guide departments in developing, managing and reviewing regulations:

1. **Regulations protect and advance the public interest and support good government:** Regulations are justified by a clear rationale in terms of protecting the health, safety, security, social and economic well-being of Canadians, and the environment.
2. **The regulatory process is modern, open and transparent:** Regulations, and their related activities, are accessible and understandable, and are created, maintained,

and reviewed in an open, transparent, and inclusive way that meaningfully engages the public and stakeholders, including Indigenous peoples, early on.

3. **Regulatory decision-making is evidence-based:** Proposals and decisions are based on evidence, robust analysis of costs and benefits, and the assessment of risk, while being open to public scrutiny.
4. **Regulations support a fair and competitive economy:** Regulations should aim to support and promote inclusive economic growth, entrepreneurship, and innovation for the benefit of Canadians and businesses. Opportunities for regulatory cooperation and the development of aligned regulations should be considered and implemented wherever possible.

7. Requirements

▸ In this section

Regulators are responsible for ensuring that any related directives and policies of Cabinet and the Treasury Board are followed, including, but not limited to:

- Cabinet Directive on Regulation:
  - Policy on Regulatory Transparency and Accountability
  - Policy on Cost-Benefit Analysis
  - Policy on Limiting Regulatory Burden on Business
  - Guide to Regulatory Stock Review
  - Guide to Regulatory Development and RIAS Writing
- The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals
- Cabinet Directive on the Federal Approach to Modern Treaty Implementation
- Directive on Charging and Special Financial Authorities
- Policy on Security of Cabinet Confidences

7.1 Initial development, consultation and planning for a regulatory proposal

7.1.1 Identifying a policy issue

When assessing and documenting public policy issues (see subsection 5.1.1 of the directive), regulators must:

- analyze the public policy issue, its causes and its context, including its urgency, risks and immediate and long-term impacts
- review relevant:
  - evidence-based assessments, analyses, standards and peer-reviewed publications
  - the regulatory and non-regulatory systems of:
    - provincial and territorial governments
    - other countries or jurisdictions
    - international organizations
- explain fully to decision-makers and stakeholders:
  - the nature of the issue
  - how its impacts have changed over time
  - why government intervention is needed
- describe the scientific and empirical evidence, uncertainties, ethical considerations and public views of the public policy issue

In instances where there is a threat, risk or harm, regulators must consider measures to mitigate the risks or reduce the threat or harm, even when there is no scientific certainty regarding the nature of:

- the threat, risk or harm
- the optimal solution

7.1.2 Early consultation

Consultation with stakeholders should begin as early as possible before the decision to proceed with a regulatory approach is taken, including when identifying a policy issue (discussed in subsection 7.1.1 of this policy). Consultation should be woven into all aspects of regulatory development. Robust early consultation with stakeholders provides an opportunity to inform analysis, including:

- which instrument would best meet the public policy objectives
- whether opportunities for regulatory cooperation and alignment are possible
- how best to implement the proposed approach

When undertaking consultation, regulators must:

- identify stakeholders that may be affected by the proposal
- inform and engage stakeholders on the nature and implications of the public policy issue, based on available evidence, science or knowledge
- engage with stakeholders when determining benefits and costs

- include stakeholders through early consultation when identifying and developing policy objectives
- explore opportunities for regulatory cooperation and regulatory alignment with other jurisdictions and international organizations in order to:
    - accomplish public policy objectives
    - respond to input from stakeholders
- set out the process and timelines clearly so that stakeholders can organize and provide input
- provide timely feedback to stakeholders on:
    - the outcomes of consultation
    - the priorities considered in decision-making

Regulators must report in the RIAS:

- the results of their early engagement with stakeholders
- how the results influenced the regulator's selection and design of the proposed regulatory instrument

Note: Regulators may choose to share draft regulatory text with stakeholders outside the Canada Gazette consultation process to help them develop specific and precise comments. Draft regulations can be released for consultation outside the process for the Canada Gazette as long as the text is approved for that purpose. Regulators must consult with the Department of Justice Canada and TBS when considering releasing consultation drafts of regulatory text.

Upon release of the draft text, Cabinet confidence no longer applies. Once the draft regulations undergo further work within the department after consultation, the Cabinet confidence is applied once again.

Consulting stakeholders on a draft regulation outside the process for Canada Gazette consultation does not satisfy the requirement to pre-publish the draft regulation in the Canada Gazette.

7.1.3 Instrument Choice

When analyzing a public policy problem and examining potential solutions, regulators must consider potential alternatives to regulation. In meeting the obligations set out in subsection 5.1.2 of the directive, regulators must:

- assess the regulatory and non-regulatory approaches of related jurisdictions to understand how they have addressed a similar public policy issue

- identify the appropriate instrument or mix of instruments, including regulatory and non-regulatory measures (legislation, regulations, voluntary mechanisms, standards, guidelines, directives and policies)
- consider the design of the regulatory response in order to:
    - effectively address the policy objectives
    - ensure that the response:
        - is proportional to the degree and type of risk
        - will not unduly affect areas that the regulations were not designed to address
- explore whether the regulatory objective can be achieved through outcome-based regulations to help ease compliance burden and facilitate innovation, particularly for technical regulations
- assess or establish regulatory cooperation or alignment with relevant jurisdictions, including opportunities for co-development in new or emerging sectors
- engage small businesses in:
    - considering alternative approaches to compliance
    - compliance promotion where applicable

Regulators should also begin to consider the following when determining whether to pursue a particular regulatory solution:

- costs and benefits of the selected instrument
- feasible alternative options

Information on the following should appear in the Triage Statement:

- the reason for regulation of the issue
- why the regulation was chosen as the appropriate instrument

7.1.4 Incorporation by reference

In accordance with subsection 5.2.6 of the directive, regulators should consider opportunities to incorporate by reference, including:

- international or national standards or regulations
- other appropriate material, including manuals, directives and lists

In some cases, incorporated material may be developed by the regulator but is usually developed by an external body, such as a standards development organization or another jurisdiction.

Should incorporation by reference be selected as a regulatory drafting tool, regulators must:

- consider the following within the context of the enabling statute:
    - the merits of using either static or ambulatory incorporation by reference
    - which approach will best achieve the regulatory objectives
- ensure that material incorporated by reference is described clearly to avoid confusion or uncertainty about the material being referenced
- ensure that incorporated documents are available, as required by the Statutory Instruments Act
- ensure that official language obligations are respected by:
    - incorporating material in both official languages
    - incorporating unilingual material only when there is a legitimate reason to do so

When a unilingual incorporation is used, departments must provide guidance in both official languages.

Regulators should explain the following in the RIAS:

- why incorporation by reference is being used
- how incorporation by reference achieves the regulatory objectives
- the reason for any unilingual incorporation when such reference is necessary

Regulators must monitor and review material that is incorporated by reference to ensure that the material:

- continues to remain accessible and relevant
- continues to meet the stated policy and regulatory objectives

Any use, adoption or incorporation of standards in regulations must comply with Canada's international trade obligations, including:

- the World Trade Organization Agreement on Technical Barriers to Trade
- any related provisions of free trade agreements that are in force

Regulators should consult with Global Affairs Canada to determine whether there are any trade commitments that pertain to the proposed regulation. For example, regulators must first consider adopting or incorporating an existing international standard before considering developing a unique Canadian standard.

7.1.5 The Triage Statement

Regulators must complete the Regulatory Analysis and Submission Triage Statement with guidance from TBS. This statement:

- facilitates early assessment of the expected impacts of the proposed regulation
- should be completed by departments at the earliest stages of regulatory design

7.1.6 Forward Regulatory Plans

Regulators are responsible for providing advance public notice of regulatory proposals and plans for review of the regulatory stock coming forward. Regulators provide this notice in a Forward Regulatory Plan. Section 7 of the Policy on Regulatory Transparency and Accountability explains this requirement.

7.2 Regulatory analysis

7.2.1 The Regulatory Impact Analysis Statement (RIAS)

Regulators must:

- complete the RIAS
- consult with TBS to determine which portions of the template are required, based on the regulatory proposal's nature and impact

The impact of the proposal is determined by the Triage Statement. The requirements outlined in this policy inform various sections of the RIAS that:

- may need to be completed
- may change over the regulation's development phase

7.2.2 Cost-benefit analysis

Regulators must adhere to the requirements articulated in:

- subsection 5.2.1 of the directive
- the Policy on Cost-Benefit Analysis

The Policy on Cost-Benefit Analysis describes the departments' requirements when analyzing the costs and benefits of regulatory proposals.

7.2.3 Limiting regulatory burden on business

Regulators must adhere to the requirements of:

- subsection 5.2.4 of the directive
- the Policy on Limiting Regulatory Burden on Business

The Policy on Limiting Regulatory Burden on Business describes departments' requirements regarding the following when developing regulatory proposals:

- the one-for-one rule

- the small business lens

7.2.4 Regulatory cooperation

To determine possible regulatory cooperation with other jurisdictions, regulators are to build on the early assessment done when the choice of instrument was analyzed (see subsection 7.1.3 of this policy and subsections 4.2 and 5.2.5 of the directive).

Regulators must demonstrate that they have thoroughly assessed regulatory approaches being used in other jurisdictions (such as international or domestic trading partners) to determine where regulatory cooperation or alignment may be possible, while meeting the desired public policy objective.

To identify potential partner jurisdictions, regulators must assess the regulatory approach that other jurisdictions have taken.

To assess whether there are opportunities for cooperation or alignment, regulators must demonstrate that they have:

- sought to identify jurisdictions that:
    - regulate in a way that is similar to that of Canada
    - are important for Canada's trade relationships
- analyzed the approach of standard-setting bodies of relevant jurisdictions or international organizations to identify possibilities for alignment
- actively engaged with counterparts in these jurisdictions and/or given consideration to cooperation and alignment

If the regulator determines that regulatory cooperation or alignment with international or domestic partners is not feasible or would not achieve the desired policy objectives, regulators must justify why an approach that is specific to Canada should be taken.

If there are new opportunities for regulatory cooperation or alignment, and if the initiative is not already part of a coordinated regulatory cooperation arrangement, regulators should contact TBS to discuss whether:

- the initiative should be included in a coordinated regulatory cooperation arrangement
- there are opportunities to leverage other forums (for example, through a memorandum of understanding)

If the regulation is being developed as part of a coordinated regulatory cooperation arrangement, regulators must reference:

- the regulatory cooperation forum(s)
- the pertinent work plan item(s) of the forum(s)

Examples of forums are:

- the Canada-United States Regulatory Cooperation Council
- the Canada-European Union Regulatory Cooperation Forum
- the Regulatory Reconciliation and Cooperation Table of the Canadian Free Trade Agreement

7.2.5 Strategic Environmental Assessment

In accordance with subsection 5.2.2 of the directive, regulators must adhere to the mandatory requirements of the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals, which sets out:

- when a Strategic Environmental Assessment should be conducted
- what a Strategic Environmental Assessment should consider

The directive also requires that an environmental analysis be fully integrated into the development of any proposal.

If a regulatory proposal identifies environmental considerations, regulators must:

- provide the scope and nature of the likely effects on the environment (positive and negative)
- describe in the RIAS the outcomes of consultation and other engagement with the public about environmental impacts
- describe in the RIAS how the implementation plan would deal with issues identified, for example:
    - mitigation measures that could reduce or eliminate the proposal's potential adverse impacts
    - opportunities to enhance potential environmental benefits
    - the scope and nature of residual effects after taking into account mitigation and enhancement measures
    - follow-up measures to monitor environmental effects
    - whether implementing the proposal supports the goals and targets of the Federal Sustainable Development Strategy

If the regulatory proposal is not likely to have environmental effects, regulators must describe the following in the RIAS:

- their due diligence
- the activities they undertook to ascertain that no environmental effects are expected

7.2.6 Assessment of modern treaty implications

In accordance with subsection 5.2.7 of the Cabinet Directive on Regulation, regulators must conduct an Assessment of Modern Treaty Implications, as outlined in the Cabinet Directive on the Federal Approach to Modern Treaty Implementation.

The directive on modern treaties sets out the operational framework for managing the Crown's modern treaty obligations, including how departments can fulfill their responsibilities.

Where there are implications regarding a modern treaty or self-government, regulators must consult directly with rights holders of the treaty or self-government to ensure that initiatives are developed and delivered in a way that respects and complies with:

- constitutionally protected provisions of the modern treaty
- the rights that the treaty sets out

Regulators must complete the Assessment of Modern Treaty Implications checklist and report on the outcomes of the assessment in the RIAS.

7.2.7 Gender-based analysis plus

In accordance with subsection 5.2.3 of the directive and the Government of Canada's commitment to gender-based analysis plus (GBA+), regulators must assess whether there are GBA+ considerations for the regulatory proposal.

Where a GBA+ assessment identifies potential impacts on groups, [3] departments must describe:

- the affected groups
- the results of public consultation with the affected groups
- the impacts of the regulatory proposal on the affected groups
- how the implementation plan deals with the impacts identified

If no GBA+ considerations are identified, regulators must describe the following in the RIAS:

- their due diligence regarding consultation
- the activities they undertook to ascertain that there are no GBA+ considerations

7.2.8 International obligations

In accordance with subsection 5.2.8 of the directive, when developing regulations, regulators must ensure that Canada's international commitments outlined in the following are met:

- trade agreements

- international agreements
- other mechanisms

Regulators should consult with the internal international affairs divisions of Global Affairs Canada and with their internal departmental international affairs divisions to determine such commitments. An example is the requirement for some regulations to be written using plain language.

Regulators must:

- determine at the triage stage whether an international trade agreement to which Canada is a party affects their regulatory proposal
- include such information in the RIAS

Examples of trade agreements are:

- the World Trade Organization's Technical Barriers to Trade Agreement
- the Agreement on the Application of Sanitary and Phytosanitary Measures
- Canada's international free trade agreements

7.2.9 Pre-publication and consultation

Regulators must submit a regulatory proposal that will be considered by the Treasury Board (Governor in Council), or other relevant regulation-making authority, for pre-publication in the Canada Gazette, Part I. Pre-publication of a regulation must include:

- the draft regulatory text
- the RIAS

Exemptions from pre-publication may be granted by the Treasury Board (Governor in Council), or other relevant regulation-making authority, when there is no statutory requirement to pre-publish. Regulators must consult with TBS's Regulatory Affairs Sector if they are considering seeking an exemption.

The standard length of the comment period following pre-publication is 30 days unless otherwise prescribed by legislative requirements and international obligations.

There is a minimum comment period of 70 days for proposals that may significantly affect international trade and concern the following:

- new and amended technical regulations
- sanitary and phytosanitary measures

The requirement for 70 days is longer than Canada's obligations under the World Trade Organization on Technical Barriers to Trade Agreement, and Canada's free trade agreements, which call for a minimum of 60 days for the comment period. The Cabinet Directive on Regulation requires 70 days in order to allow Global Affairs Canada to notify the World Trade Organization and other international trade partners that the regulatory proposal has been pre-published for consultation.

7.2.10 Implementation

In accordance with subsection 5.2.9 of the directive, regulators must plan for the implementation of the regulatory proposal as part of their analysis. Such planning may examine the following:

- implications for other jurisdictions (domestic and international)
- timing
- infrastructure requirements (for example, information management and information technology)
- sources of funding
- compliance promotion and outreach
- training
- development of up-to-date guidance, technical documents and enforcement plans
- evaluation metrics

7.3 Approval and final publication of the regulations

In accordance with the Statutory Instruments Act, all approved regulations must be published in the Canada Gazette, Part II, after they are made and registered, except where they are exempted by one of the following:

- section 15 of the Statutory Instruments Regulations (C.R.C., c. 1509)
- enabling legislation

A RIAS must be included with any published regulation.

8. Miscellaneous Amendment Regulations

Miscellaneous Amendment Regulations (MARs) are minor, non-substantive amendments to existing regulations. They may be determined by:

- regulators, including through consultation with stakeholders
- by the Standing Joint Committee for the Scrutiny of Regulations

The MARs process takes a "light-touch" approach, as the nature of the regulatory amendments have no real impact.

Examples of items that may be considered as MARs amendments include, but are not limited to:

- repealing obsolete or spent provisions that have no current application
- eliminating unnecessary duplication of text
- renumbering sections
- correcting cross-references
- correction discrepancies between English and French
- improving consistency among provisions within regulations
- harmonizing terms with those used in enabling statutes and related regulations
- making non-substantive amendments to improve clarity
- correcting grammatical or typographical errors
- updating references to names of companies, locations, titles of office holders, and the like
- updating references to standards and other documents incorporated by reference (where the change is non-substantive)

Any amendments that substantively alter regulations require consultation and may not proceed under the MARs process. Substantive amendments:

- significantly alter compliance or administrative costs
- create new regulatory requirements

In the MARs process, regulators may use a streamlined RIAS, using a template that has standard text. MARs amendments have several exemptions, including being exempted from pre-publication in the Canada Gazette, Part I.

When considering a MARs amendment, regulators should consult with TBS early in the process to:

- ensure that the proposed regulatory amendments may be made using the MARs process
- seek guidance on requirements and the MARs process

9. Accountability, roles and responsibilities

▸ In this section

9.1 Regulatory Affairs Sector, Treasury Board of Canada Secretariat

As a central policy and oversight body, the TBS is responsible for supporting the federal regulatory system by:

- overseeing federal regulatory policy
- supporting evidence-based decision-making by the Governor in Council
- advancing and promoting regulatory cooperation and alignment

TBS works with departments to:

- develop appropriate evidence to support regulatory proposals, such as cost-benefit analysis
- challenge the analysis of regulatory proposals for consistency with the requirements of the Cabinet Directive on Regulation

TBS also:

- advises regulators on regulatory policy and good regulatory practices
- recommends exemptions from pre-publication to the Treasury Board (Governor in Council) on a case-by-case basis
- provides education, guidance and training to the federal regulatory community

TBS is responsible for updating and maintaining this policy and any supporting guidance.

9.2 Privy Council Office

The Privy Council Office (PCO) assesses the following for consistency with the Cabinet Directive on Regulation, this policy and with the Cabinet Directive on Law-Making:

- memoranda to Cabinet
- legislative proposals regarding instrument selection and regulatory implications

Under the Statutory Instruments Act, the Orders in Council Division of PCO has the following responsibilities in the regulatory process:

- **examination:** PCO examines regulations with the Department of Justice Canada and advises the regulation-making authority of any issues
- **registration:** Within 7 days after making a regulation, the regulation-making authority transmits copies of the regulation in both official languages to PCO, which registers them. PCO can refuse registration if it considers that certain sections of the Statutory Instruments Act were not followed

- **coming into force:** Regulations ordinarily come into force:
    - on the day they are registered
    - later if specified in the regulation

  A justification must be provided to PCO for regulations that are expressed to come into force earlier than the day of registration.
- **quarterly consolidated index of regulations:** PCO prepares a quarterly consolidated index of all regulations and amendments to regulations after the end of the preceding calendar year
- **revisions and consolidation:** After consulting with the Deputy Minister of Justice, PCO can ask regulation-making authorities to revise or consolidate regulations.

9.3 Public Services and Procurement Canada

The Canada Gazette Directorate of Public Services and Procurement Canada is responsible for publishing the Canada Gazette. The Canada Gazette is the official newspaper of the Government of Canada for:

- formal public notices
- official appointments
- proposed regulations
- regulations
- public acts of Parliament

The Canada Gazette is published under the authority of:

- the Statutory Instruments Act
- the Statutory Instruments Regulations

The Canada Gazette serves as a tool for consultation between the Government of Canada and Canadians. It gives Canadians the opportunity to provide their comments on proposed regulations published in the Canada Gazette, Part I. Anyone who may be affected by the proposed regulations can request background information from the issuing department. The Canada Gazette Directorate is responsible for ensuring:

- a rigorous publication process
- that strict deadlines are met for publishing laws, regulations and other statutory instruments

9.4 Department policy leads

The Canadian Environmental Assessment Agency and Environment and Climate Change Canada are responsible for providing advice, training and tools regarding:

- the Strategic Environmental Assessment
- sustainable development
- the potential environmental effects of government initiatives

Global Affairs Canada, in collaboration with the Department of Justice Canada, is responsible for providing advice and guidance about obligations under international agreements to which Canada is a party.

Crown-Indigenous Relations and Northern Affairs Canada, with the Department of Justice Canada, is responsible for providing advice on Advancement of Modern Treaty Implementation.

Status of Women Canada is responsible for providing advice on gender-based analysis plus (GBA+).

9.5 Federal regulators

Federal regulators are responsible for:

- understanding the requirements set out in this policy
- applying the requirements to all Governor in Council and non-Governor in Council regulatory changes

10. Additional resources

Additional information and guidance can be found in the Guide to Regulatory Development and RIAS Writing.

11. Enquiries

Enquiries and feedback on this policy and its implementation can be made by contacting TBS.

12. Date of last revision of this policy

This policy was last reviewed on September 1, 2018.

Footnotes

1 Throughout this document "departments" denotes federal organizations

2 Specifically, the ministers of the Treasury Board acting as a committee of the Queen's Privy Council for Canada in its role of approving regulations

3 Groups are based on factors such as gender, sex, age, language, education, geography, culture, ethnicity, income, ability, sexual orientation, gender identity and other factors.

Date modified:

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